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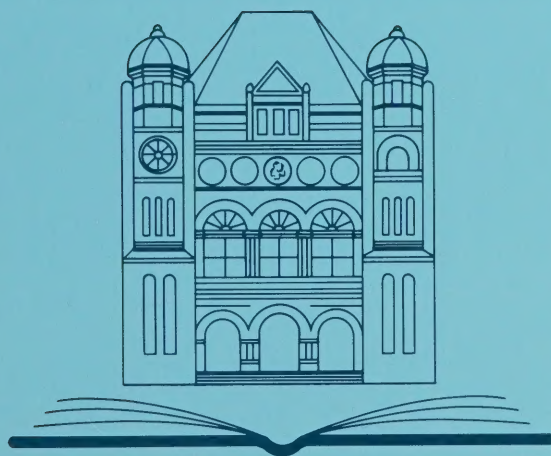
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**LICENCE REVOCATION:
A NEW ENFORCEMENT MECHANISM
FOR FAMILY SUPPORT ORDERS**

Current Issue Paper 159



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March 1995

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INTRODUCTION

The "massive social problem" of the non-payment of family support has vexed legislators in Canada and the United States for years.¹ Although all of the provinces and states now have family maintenance enforcement legislation and computerized state-run programs, there is a continuing need for effective tools to ensure the adequate and regular payment of family support.

This need is underscored by research that shows the nature and extent of the problem. It is clear that family break-ups have become increasingly commonplace. In Canada, there is now one divorce for every 2.4 marriages, a tenfold increase from the 1951 figure of one in 24. The number of single-parent families continues to rise, and research on the economic consequences of marital break-up indicates a substantial drop in the standard of living of the custodial parent (usually the mother) and the children, and higher poverty rates for this group as compared with non-custodial parents.²

The incidence of support default (usually by fathers) continues to be unacceptably high. Nationally, the default rate is 50 - 75%. In Ontario, the rate is 50% with more than \$753 million in support arrears outstanding.³ Additionally, while more than \$42 million in support arrears were returned to the province's Treasury in 1993-94 for funds previously paid out to families as social assistance, the province continues to bear a financial burden through social assistance required when parents fail to comply with support orders.

In January 1995, the Federal/Provincial/Territorial Family Law Committee released its Report and Recommendations on Child Support.⁴ Although the focus of the inquiry was to establish adequate support levels using support guidelines, the Committee noted the continuing problems with the enforcement of support orders. It identified difficulty in locating defaulting payers as a major problem for all enforcement jurisdictions. Self-employed debtors in particular were a challenge to all provincial and territorial enforcement programs because continuing garnishment or automatic payroll deduction is ineffective against this group and many of them are able to maintain assets in the name of their company and/or others, to elude making payments.⁵

In response to these concerns, new enforcement tools have recently been introduced in Canada and the United States.⁶ One of the more controversial of these links the granting of state-issued licences to

compliance with support orders. To date, two Canadian jurisdictions and nineteen American states have adopted some form of licensing withholding or revocation.⁷ (Attached as an Appendix to this paper is a chart summarizing the main features of the legislation in these states.) In 1993, Ontario announced that licence revocation was under consideration.⁸ It is also actively being considered in at least two other provinces - Saskatchewan and Manitoba.⁹

This paper surveys the licensing withholding/revocation measures in Alberta, Nova Scotia and in three selected American jurisdictions - California, Florida, and Maine. While the two Canadian schemes are limited in their application to the withholding or suspension of driver's licences and other motor vehicle related privileges, the American plans apply to a much broader range of publicly-issued licences including those required to engage in a business, occupation, or profession. Each of the three states was selected to illustrate different aspects of the American models - California initially adopted licence withholding and has since incorporated licence suspension; Florida uses a court based system in contrast to the administrative processes in most other jurisdictions; and Maine was selected because of the run-away success of the plan.

Because licence revocation as a support enforcement remedy is a relatively recent development, few formal assessments of its effectiveness exist.¹⁰ However, preliminary results and anecdotal evidence from individual jurisdictions are available. This preliminary evidence supports the view that the remedy is an effective tool in the collection of support arrears.

Finally, important policy issues surround the decision to implement licence revocation to enforce support orders. These issues and the main arguments pro and con its implementation are canvassed.

ALBERTA

Alberta was the first jurisdiction in Canada to legislatively link drivers' licences with the enforcement of support orders. The *Maintenance Enforcement Amendment Act, 1994*, which came into force on December 1, 1994, introduced several new support enforcement tools including withholding the issuance or renewal of a person's driver's licence if the person is in default of a maintenance order.

This new measure builds on the province's existing enforcement system under which every maintenance order made by a court in Alberta (including those made outside the province, but registered under the *Reciprocal Enforcement of Maintenance Orders Act*) is automatically filed with the Director of Maintenance Enforcement. (A support recipient may opt out of the scheme by filing a written statement to that effect.) The Director is required to collect and monitor support payments on behalf of the recipient. If there is a default, the Director is mandated to enforce the order in whatever manner the Director considers appropriate.¹¹

The new motor vehicle services withholding provisions provide the Director with a new enforcement tool that can be invoked administratively. It is a process that is designed to target, in particular, self-employed support debtors, a group that traditionally has proven difficult for enforcement officials.

Application of Legislation

Affected Licences

The legislation affects driving licences and all motor vehicle services provided under the province's *Motor Vehicle Administration Act*.

Types of Support Orders

The motor vehicle services withholding remedy can be used to enforce both child and spousal support orders.

Default

There is no minimum period or amount of default required before the process can be used to enforce the support order.

Procedure

Where there is a default in the payment of a support order, the Director may notify the Registrar of Motor Vehicle Administration of the debtor's name for the purposes of withholding the payer's driver's licence. Such notification is not required by the Act and the Director has the discretion as to whether to make notification. Under current policy, the Director will do so where the payer is attempting to evade

the system, but not where the payer, though in default, has demonstrated good faith and a willingness to make support payments.¹²

Upon receipt of such notification, the Registrar must

(a) in respect of the debtor named in the notice, refuse to perform any function or service or to issue, renew or otherwise deal with any document, operator's licence, certificate of registration, in transit permit or licence plate; and

(b) refuse to register the vehicle in the name of a new owner if the ownership of a registered vehicle passes from a person who is a debtor under the maintenance order directly or through intermediary owners to a person described by the regulations, except as permitted by the Director under section 16.1 (3) of the *Maintenance Enforcement Act*, until the Director withdraws the notice or notifies the Registrar that the maintenance order has been withdrawn.¹³

The legislation does not authorize the suspension or revocation of the defaulting payer's driver's licence or motor vehicle registration. Instead, the payer is prevented from renewing or having issued any licence, registration or permit until the support order has been paid up or until arrangements satisfactory to the Director for the payment of support have been made.

Notice Provisions

The Director is not required to notify the defaulting payer of the pending licence restriction action. Indeed, if warned of the Director's intentions to notify the Registrar, the debtor could circumvent the process by seeking an early renewal of the licence without paying the arrears.

Temporary Licence

A defaulting payer may nonetheless preserve his driving privileges and access to other motor vehicle services by making arrangements satisfactory to the Director for the payment of the maintenance order. In such cases, the Director will rescind the notification to withhold motor vehicle services thus allowing the Registrar of Motor Vehicle Administration to issue the payer an operator's licence or certificate of

registration effective for a period of two years or less as specified by the Director.¹⁴ The Registrar may thereafter carry out any other function, service, issuance, renewal, registration or other service under the *Motor Vehicle Administration Act* that would otherwise be prohibited by notification of the default.

Effectiveness

Although few preliminary figures are available, officials with the Alberta Department of Justice indicate that the licence withholding measure is very effective.¹⁵

In the three months since the legislation came into force, 384 drivers' licences or vehicle registrations have been denied for non-payment of maintenance. It is believed that the threat of losing a licence has had a deterrent effect on support payments in general, and in some specific cases has produced spectacular collection results. In one case, a debtor paid up an accumulated debt of over \$50,000 and in another \$16,000 in arrears was collected as a result of licence withholding.¹⁶

NOVA SCOTIA

Nova Scotia was the second Canadian jurisdiction to introduce driver's licence suspension as a maintenance enforcement remedy. The *Maintenance Enforcement Act, 1995* received third reading and Royal Assent on February 6, 1995 and is expected to come into force no later than January 1, 1996.¹⁷

The Act, which is the result of a comprehensive revision of the province's support enforcement program, authorizes the suspension and revocation of a support debtor's driver's licence and motor vehicle registration.

Application of Legislation

Affected Licences

Although the licence suspension remedy currently applies only to licences required for the operation of a motor vehicle, there is nothing in the legislation to limit the extension of this administrative remedy to

other types of licences including, for example, those required to conduct certain business, professional, commercial or recreational activities. The Nova Scotia legislation implicitly anticipates the possibility of such an extension in the regulation-making authority of the Act. Section 61(f) allows the Governor in Council to make regulations

providing for the withholding, suspension or revocation of licences, permits or certificates where a payer is in default under a maintenance order;

The unqualified nature of this authority would permit the government to decide at a later date to provide for the withholding, suspension or revocation of other types of licences (as is already the case in a number of American jurisdictions) without further amendment to the legislation.

Types of Support Orders

An order for the payment of child or spousal maintenance that is enforceable in the province can be enforced using the licence suspension remedy.

Default

There is no minimum period or amount of arrears required before suspension action can be taken.

Procedure

The new scheme provides that any maintenance order made by a court in Nova Scotia will automatically be filed by the clerk of the court with the Director of Maintenance Enforcement. A support recipient may opt out of the plan by completing and filing a written consent to that effect, signed by both the recipient and the payer. Assuming no such consent is filed, every payer is required, within a prescribed period, to advise the Director of how the payer intends to make the payments required by the maintenance order and to obtain the approval of the Director to the arrangement. Failure to comply with the approved arrangement will result in enforcement proceedings being initiated by the Director who may use whatever means have been authorized by statute which she/he considers appropriate in the circumstances.¹⁸ One

of the newly authorized enforcement mechanisms is the administrative suspension or revocation of a defaulting payer's driver's licence.

Notice Provisions

Upon default, the Director may send a notice to the payer informing him that if he does not make arrangements satisfactory to the Director for complying with the maintenance order within a prescribed period of time (not yet prescribed)

any driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle or any permit issued to the payer pursuant to the *Motor Vehicle Act* may be suspended or revoked.¹⁹

If no arrangement is made, the Director may then request the Registrar of Motor Vehicles to suspend or revoke the payer's driver's licence, privilege of obtaining a driver's licence, right to operate a motor vehicle in the Province or any other licence, registration of a vehicle, or any permit issued to the payer by the Registrar. The Registrar is required to comply with the request and is thereafter precluded from re-issuing or renewing any licence, permit or registration until notified to the contrary by the Director.²⁰

Conditional Licence

The Act recognizes that a suspension or revocation of a driver's licence may cause hardship in circumstances where the operation of a motor vehicle is required for employment. Where satisfied that the suspension or revocation of driving privileges would cause a hardship, the Director may allow the issuance of a conditional driver's licence which authorizes the operation of a vehicle "for employment purposes only."²¹

UNITED STATES

Many of the recent child support enforcement initiatives in the United States can be traced to the 1992 Report of the U.S. Commission on Interstate Child Support. Although the mandate of the Commission was to investigate and recommend ways to improve the interstate

establishment and enforcement of child support awards, many of the recommendations were ultimately adopted by individual states.

The Commission identified the inadequacy of child support as one of the leading causes of poverty among single-parent families. Concerning the specific problem of support enforcement, the Commission noted that wage withholding (a measure required by the federal *Family Support Act, 1988*, which will be implemented in every state by 1995) was ineffective against self-employed support obligors. This results in the potentially lengthy and costly process of identifying other income or assets against which attachment or garnishment can be sought. The Commission made three recommendations designed to help alleviate this particular problem:

- ▶ First, that Congress require states to enact procedures for denying driver's licences to persons who are the subject of outstanding warrants for failure to appear at a child support hearing.
- ▶ Second, that the state occupational licensing departments suspend or deny occupational, professional or business licences to persons who are the subject of an outstanding warrant for failure to appear at a child support hearing.
- ▶ Third, that Congress require states to enact laws prohibiting state occupational licensing departments from issuing or renewing an occupational, professional or business licence to any individual who owes child support arrears. Defaulters would be able to obtain a temporary licence for up to thirty days to allow the defaulter to seek an expedited inquiry or to arrange a payment plan which is satisfactory to the obligee or court.²²

The Commission's rationale for these recommendations is that a licence is a privilege and the government has an interest in seeing that the licence holder is law abiding.²³

More recently, at the federal level, bills have been introduced in the United States Congress to implement many of the recommendations of the Commission's Report, including the licence withholding and suspension remedy.²⁴ Notably, President Clinton included the withholding of drivers' and occupational licences for non-payment of child support as part of his welfare reform package announced in June 1994.²⁵

CALIFORNIA

California's *Welfare and Institutions Code* and the *Business and Professions Code* were amended in November 1992 to provide for the withholding of various state-issued licences in cases of non-compliance with a support order.

Recently, §11350.6 of the *Welfare and Institutions Code* was further amended to authorize the suspension of such licences where the default is long-standing or where the support obligor subsequently defaults under an arrangement with the district attorney to cure the default. These latter amendments are to come into force on January 1, 1996.²⁶

Originally, the licence withholding program was to have been in effect until January 1, 1997, unless otherwise extended by legislation. In September 1994, the provision repealing the legislation as of that date was itself repealed.

Application of Legislation

The California licence withholding legislation applies to any licence that is required to operate a commercial motor vehicle or to engage in a business, occupation or profession, including membership in the State Bar. This covers approximately 8.1 million licence holders, more than 100 professions and occupations, and 40 licensing boards.²⁷ The State's 19.6 million non-commercial drivers' licences are not subject to the legislation.²⁸

Types of Support Orders

The remedy may be used to enforce an order for child or family support (an order combining child and spousal support without designating the amount to be paid for either). It is not available to enforce pure spousal support orders. However, effective January 1, 1996 the remedy may be used to enforce orders for spousal support when a related child support obligation owed to the parent by the same obligor is being enforced at the same time.²⁹

Compliance

A support obligor is considered to be in compliance with a court order of support as long as he or she is no more than 30 calendar days in arrears in making payments in full for current support. After January 1, 1996, an obligor will be deemed to be in compliance if payments are made in accordance with a Court order, or pursuant to an agreement with the district attorney.

Procedure

Matching

California's licence withholding is based on a system of "matching" the names of support order defaulters to the various licensing authorities' lists of licence applicants. The process begins with each of the State's 58 district attorneys compiling a monthly list of the names of those support obligors who are not in compliance with their support orders. The list is sent to the Department of Social Services (the state enforcement agency) for consolidation and distribution to each of the affected licensing boards and the State Bar. The boards and the State Bar are required to promptly review the list prior to issuing or renewing any licence to determine if there is a "match" with anyone currently applying for a licence or to have their licence renewed.

Notice to Obligor

If a match is found, the licensing board is required to notify the applicant immediately of its intention to withhold issuance or renewal of the licence due to the applicant's non-compliance with a support order. The notice to the applicant/obligor must emphasize the necessity of obtaining a release from the district attorney as a condition for the issuance or renewal of a licence, and that without a release, the application will be denied.

Temporary Licences

At the time that notification is made, and instead of issuing a renewal of the licence, the board will issue a one-time temporary licence valid for a period of 150 days to permit the defaulting payer an opportunity to cure the default and obtain a release from the district attorney. Temporary licences cannot be renewed or extended.

Suspension

Recent amendments to the legislation will extend the licensing boards' authority. Effective January 1, 1996, boards will have the power to suspend a licence where the non-compliance is long-standing. To keep track of these cases, the Department may provide all licensing boards with a supplemental list of obligors whose names have already appeared on the consolidated list and who have remained in default for over four months. The Department may request that any such obligor be subject to suspension provided that the licence would not otherwise be eligible for renewal within six months from the date of the request by the Department.³⁰

Administrative Review

District attorneys are required to establish review procedures to investigate the amount of child support arrears, or any possible defense to the denial of the licence. They must also provide information on how to modify a support order, and assist the applicant in establishing a payment schedule.

An applicant is entitled to challenge the inclusion of his name on the list by filing a written request for a review by the district attorney. The district attorney must conduct the review and inform the applicant of their decision within 75 days of receipt of the request.

The district attorney must immediately send a release to the affected board(s) and the applicant if he or she finds any of the following:

- ▶ that there is compliance with the support order or an agreement has been negotiated with the district attorney for payment;
- ▶ a request for review has been made but the district attorney will be unable to complete the review in time to enable the applicant to bring a judicial review application within the 150 days during which the temporary licence is valid;
- ▶ the applicant has filed and served a request for judicial review but the request will not be resolved within the 150 day period of the temporary licence; or
- ▶ the applicant has obtained a judicial finding that there is compliance with the support order.

If the applicant is responsible for the delays in completion of either the district attorney's review or the court's hearing of the judicial review application referred to above, then the delay is not a basis for providing a release.

The release will be denied if the applicant is not in compliance with the support order. The applicant must then be notified that he or she may request any of the following:

- ▶ judicial review of the district attorney's decision not to issue a release;
- ▶ a judicial determination of compliance; or
- ▶ modification of the support order.

Judicial Review

Where the applicant requests a judicial review of the district attorney's decision, the court must hold a hearing within 20 days of the request. The review is limited to a determination of whether:

- ▶ there is a support order;
- ▶ the petitioner is the obligor covered by the order; and
- ▶ the support obligor is or is not in compliance.

Effective January 1, 1996, the court may also consider "the extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release. The court will have the authority to uphold the action, unconditionally release the licence, or conditionally release the licence subject to terms."³¹

Evaluation

The State Department of Social Services is required to report to the Legislature and the Governor by November 1, 1995 on the following:

- ▶ the number of delinquent obligors;

- ▶ the number of support obligors who were licence applicants under the program;
- ▶ the number of new licences and renewals delayed and temporary licences issued, and the number of new licences and renewals granted following releases issued under the program; and
- ▶ the costs of implementation and enforcement of the program.

Effectiveness

Although there has not yet been a formal assessment of the licence withholding mechanism in California, preliminary information suggests that it has been successful:

- ▶ conservatively, more than \$6.8 million in support arrears has been collected as a result of the licence withholding/suspension remedy. This figure is based on a statewide average of \$1,000 in collection each time someone clears a licence;³²
- ▶ estimates on the percentage of licensees that actually lose their licence after a match has been made and a temporary licence issued, range from 10% to 30%.
- ▶ program administrators confirm that the program is a success, collecting \$5 for every \$1 spent in enforcement;
- ▶ in addition to its effect on collections of arrears, administrators indicate that it also has a deterrent effect in keeping payments current;
- ▶ the following is a list of the 10 most frequently matched types of licences:
 - ▶ commercial drivers
 - ▶ security guards
 - ▶ contractors
 - ▶ car salespeople, dealers
 - ▶ lawyers
 - ▶ auto repair shop owners, smog station owners, smog inspectors, mechanics, and brakes and lamp adjusters
 - ▶ insurance brokers, agents
 - ▶ barbers and cosmetologists

- ▶ real estate brokers, agents
- ▶ teachers.³³

FLORIDA

Florida introduced licence suspension legislation for the enforcement of child support orders in July 1993.³⁴ The new scheme was based on the recognition that

[c]ommon-law and statutory procedures governing the remedies for enforcement of support . . . have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. . . . It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.³⁵

One of the features which distinguishes the Florida legislation from the models used in California, Maine and the two Canadian jurisdictions is that the suspension remedy is court based. The other jurisdictions profiled in this paper permit the licence suspension or withholding as an administrative act, authorized by statute to be performed by the relevant support enforcement agency. The courts are not involved except in the context of judicial review. In Florida, a court application and order is required to suspend a support obligor's licence.

Another difference is the amount of notice that must be given to the defaulting support obligor of the possible suspension, to permit him the opportunity to cure the default and avoid suspension. In Florida, the defaulter is entitled to two 30 day notices before action to suspend can be taken and the court is given broad discretion to determine the appropriateness of each licence suspension.

Application of Legislation

Affected Licences

Motor vehicle licences and registrations and licences required for the conduct of business, trades and professions are subject to the suspension remedy. Members of the State Bar are subject to a complaint procedure and may face disciplinary action for non-payment of child support orders.

Types of Support Orders

The remedy is available for the enforcement of child support but not spousal support.

Last Available Remedy

No minimum period of default is stipulated before the remedy can be sought. However, the statute requires that all other available remedies to enforce the order (e.g., wage garnishment, seizure and sale of assets, etc.) be exhausted before the court is petitioned for a suspension of an occupational licence. Drivers' licences are not subject to this pre-condition. Moreover, the court is prohibited from denying a licence or from ordering a suspension if it is determined that there is an alternative remedy which is likely to accomplish the objective of collecting the arrears.³⁶

Procedure

On default of the payment of an order for child support, either the recipient or, if the recipient is receiving social assistance, the Title IV-D agency (federally funded agencies with a mandate to provide social assistance to families with dependent children and to enforce child support orders), is entitled to petition the court for an order to suspend or deny issuance of a delinquent obligor's licence.

Tracking of Defaulter

To facilitate the tracking of defaulters, Title IV-D agencies are authorized to screen all applicants for new or renewal licences or

certificates, current licences or certificates, certificate holders of all licences, and certificates subject to the legislation. If the Title IV-D agency determines that an applicant, licensee or certificate holder is an obligor who is delinquent on a support obligation, the agency shall certify the delinquency.³⁷ Due to the lack of a computerized system, screening is done only on a case by case basis if there is some indication that the obligor is a licensee.³⁸

Notice Provisions

Before petitioning the court, the enforcement agency or recipient must first give notice to the delinquent obligor that the default exists; that he must either pay the arrears or reach an agreement to pay within 30 days; and that the court may deny or suspend the obligor's licence. In the case of the suspension of driving privileges or the withholding of registration of motor vehicles, the notice period is 15 days.

If the amount remains unpaid after 30 days, a second notice must be sent to the defaulter informing him that he has an additional 30 days to comply (15 days in the case of motor vehicle registration or a driver's licence), and that if he fails to do so, the agency or the recipient may petition the court for an order of suspension. No petition may be filed until the recipient has exhausted all other available remedies.

Court Application

The licence suspension or denial remedy is available only through court application and order. The obligor has the opportunity to defend the application. If the obligor fails in the defense to such an action, the court will order the denial or suspension. However, the court may deny the application if the court finds that

... the denial or suspension would result in irreparable harm to the obligor or employees of the obligor or would not accomplish the objective of collecting the delinquency; or the obligor demonstrates that he has made a good faith effort to reach an agreement with the obligee (including, where appropriate, the Title IV-D agency).³⁹

If the obligor subsequently pays or reaches an agreement to settle the delinquency and makes the first payment required by the agreement, the

licence shall be issued or reinstated upon written proof to the court of the payment.

Effectiveness

According to officials with the state support enforcement agency, the licence denial/suspension remedy has been successful.⁴⁰

- ▶ During the period of January to December 1994 Florida sent out 875 notices to defaulting obligors resulting in the collection of more than \$200,000 in arrears.
- ▶ By December, only 30 of these cases had proceeded to the point of a court petition: 24 drivers' licences, five professional licences, and one business licence were suspended. Sixty-nine had reached an agreement for a payment plan; and the remaining obligors had still not proceeded to court.

MAINE

Citing the "substantial impact on child poverty and state welfare expenditures", and the need to encourage payment of child support, the State of Maine introduced the licence revocation remedy in July 1993. The intention of this remedy was to help the State collect child support from chronic non-payers who do not have a steady source of garnishable income.⁴¹

Application of Legislation

Affected Licences

Any licence that is required to operate a motor vehicle or to engage in a profession, occupation, business or industry (occupational licence) is subject to revocation for non-compliance with a support order.⁴²

Types of Support Orders

A "court order of support" is defined to mean an order for support of dependent children issued by any court of the State. A default in the

payment of spousal support does not give rise to the licence revocation remedy.⁴³

Compliance

A support obligor is in "compliance with a court order of support" if he is no more than 90 days in arrears in making payments in full.

Procedure

The Department of Human Services (the state child support enforcement agency) is responsible for initiating enforcement action against defaulting support payers.

Notice Provisions

When a support obligor is in default (more than 90 days in arrears), the Department may serve a notice of "Non-Compliance and Intention to Certify for Licence Revocation" on the support obligor. This notice informs the defaulting obligor that the Department intends to "certify" him as being in default and to submit his name to any appropriate licensing board as a "licensee who is not in compliance with a court order of support."

The notice must inform the obligor that:

- ▶ he may request an administrative hearing with the Department to contest the issue of compliance;
- ▶ if the obligor requests a hearing within 20 days of service, the department shall stay the action regarding revocation of the licence;
- ▶ if he does not request a hearing within 20 days of service and is not in compliance with a court order of support, the Department shall "certify" the obligor to any appropriate board and thereafter the board must revoke the obligor's licence and refuse to issue or reissue a licence until the obligor provides the board with a release from the Department that states the obligor is in compliance with the support order.

Further notification to the obligor is required when the Department actually issues and files the certification of non-compliance with a licensing board.

Administrative Review

An administrative hearing on the Department's intention to "certify" the obligor is held by the Department and is limited to the issues of whether the obligor is required by court order to pay child support and, if so, whether the obligor is in compliance with the order. Other issues, including the reasonableness of a payment arrangement in light of the obligor's current circumstances, may be raised so as to preserve them as issues under judicial review but cannot be determined by the Department. The decision of the Department is subject to judicial review.

Judicial Review

The court may hear and determine any issue raised at the administrative hearing including the reasonableness of a payment arrangement in light of the obligor's current circumstances.

Licensing Boards

Notice

A licensing board that has received a "certificate of non-compliance" from the Director of Human Services is required to notify the obligor that his application for issuance or renewal of a licence may not be granted, or that his licence has been revoked because his name has been certified by the Department of Human Services as a support obligor who is not in compliance with a court order of support.

Licensing Information

To facilitate the matching of support order defaults with licensees, all licensing boards are required to provide the Department of Human Services with information on magnetic tape or other machine-readable form, about applicants for licensure and all current licensees.

Upon receipt of this information, the Department must identify and notify each board of the names of any of its licensees who are not in compliance with a support order. The board may not issue or renew a licence for any such person until the board receives a release from the Department.

Effectiveness

Although no formal evaluation of the licence revocation remedy is expected until January 1996, the most recent reports from the Department indicate that the scheme has been very successful in collecting unpaid child support.

- ▶ Between August 24, 1993, the date of the first mailing of notices informing delinquent child support obligors of the enactment of the new licence revocation law, and June 15, 1994, the Department collected over \$ 11.5 million in back child support from over 9,000 obligors without actually having to revoke one licence. By January 14, 1995, 12,221 of the 21,018 delinquent obligors notified paid \$21,454,436 in arrears.
- ▶ As of February 7, 1995 licence issuing authorities have been notified to revoke
 - ▶ 39 drivers' licences;
 - ▶ one master electrician's licence; and
 - ▶ one motor vehicle inspection's licence.
- ▶ As of February 7, 1995, 17 of the 41 individuals subject to licence revocation had come into compliance with their child support orders.⁴⁴

PROS AND CONS

As one of the new creative measures that legislators have adopted in an effort to ensure the adequate, consistent and regular payment of support, licence revocation has engendered much debate. The following are some of the main arguments in favour and against.

Arguments in Favour

- ▶ If a person is continuously employed by a company or government, collection by means of continuing garnishment or automatic payroll deduction is relatively easy. However, such measures are ineffective against a group from whom it has traditionally been difficult to collect - self-employed debtors. These debtors do not have wages which can be garnisheed or withheld and many are able to maintain assets in the name of their company and/or others to elude making payments. Licence withholding/revocation is an effective tool against this group.
- ▶ Locating defaulting support payers continues to be a major problem for all enforcement jurisdictions. The imposition of a restriction on a debtor's licence forces the debtor, on threat of losing his licence, to seek out the enforcement agency to make an arrangement for payment rather than having the agency try to locate the debtor and his assets. It is therefore a more cost effective method of tracing the debtor.
- ▶ The administrative nature of the licence revocation remedy (in most, though not all of the jurisdictions) does away with the cost and delay of court appearances, including the need for repeat return visits for judicial rulings when default occurs. This allows for speedier and less costly enforcement for the state and the support recipients.
- ▶ The threat of losing a licence has a deterrent effect. Many payers keep up with support payments because they know they can lose their licences if they fail to comply.
- ▶ A publicly issued licence is a privilege, not a right. As such, the government has an interest in seeing that the licence holder is law-abiding before issuing the licence. The state also has an interest in not extending the privilege to someone who, through non-payment of support, is responsible for the state having to bear the financial burden of supporting the recipient through social assistance.
- ▶ Although it has been suggested that the plan is self-defeating in that it takes away the defaulting payer's ability to earn his living and pay support, it should be remembered that the payer didn't pay the support when he had the licence anyway.

Arguments Opposed

- ▶ The loss of a driver's licence, particularly for someone in a rural area, could have the effect of preventing the person from working to make the income to pay the support. It serves only to punish the payer without ensuring payment of support.
- ▶ The measure will have little deterrent effect. Instead, withholding or suspension will simply encourage people to drive without a valid operator's licence.
- ▶ There is no rational connection between the right to hold certain licences and the non-payment of child support. Such a measure bears no relevance to competence to operate a motor vehicle (or professional competence in jurisdictions where occupational and professional licences are subject to restrictions).
- ▶ The system may drive financially strapped parents underground or to another jurisdiction. This could result both in no improvements in support payments and in children who see even less of the defaulting parent.
- ▶ If the system operates to withhold the renewal of a licence rather than to suspend it during its life, then licences with a longer life (period of validity) will be subject to withholding less frequently than licences with a shorter life. For example, in the State of California, a commercial driver's licence has a life of four years as opposed to only one year for a real estate broker's licence. There may be an unfairness in the application of the measure.
- ▶ When fathers pay less than full support they go on the list for licence revocation or withholding and become known as "deadbeat dads", the same as those who pay no support at all. It should not be an all-or-nothing response.
- ▶ Linking motor vehicle or occupational licensing to the unrelated question of support payment will have the effect of paving the way to greater and greater use of licensing as a way to control all types of behaviour that are unrelated to the purpose of licensure.

CONCLUSION

The issue of child and family support is a deeply emotional one for many. Non-custodial parents, primarily fathers, take issue with the characterization of them as "deadbeat dads;" the classification of minor shortfalls or late payments as defaults; having to bear the cost of initiating support variation proceedings while the state pays for the enforcement of the orders; and the failure of the state to adequately enforce access orders. On the other side, growing numbers of sole custodial parents, primarily mothers, struggle to raise their children in the face of high rates of support default and increasing rates of poverty. The delay and cost associated with trying to enforce support orders has been recognized by the state which has to a large degree taken over the enforcement.

These are not new problems. Legislators in Canada and the United States have wrestled with possible solutions for many years. Licence withholding and revocation is one of the creative new options that a number of jurisdictions have adopted in their efforts to ensure the consistent and regular payment of support.

Although there are no formal evaluations or studies of this new enforcement tool, preliminary results strongly suggest that it is effective in collecting arrears of support and in acting as a deterrent to non-compliance. While there will always be a certain intractability to the problem of support default and no single approach will solve all enforcement problems,⁴⁵ licence revocation appears to be one of the first tools that is effective against a group that has proven particularly adept at eluding payment and enforcement - self-employed debtors.

Some of the criticisms levelled against the licence revocation remedy appear not to have been borne out by the preliminary results. Most of the defaulters cure the default or make arrangements satisfactory to the enforcement agencies and thus avoid having their licences revoked. If the purpose is to locate defaulters and secure payment rather than revoke the licence, then the preliminary evidence suggests that the measure meets this goal. Compared to the number of notices sent to defaulters of possible revocation, relatively few licences are actually revoked.

As to the criticism that the measure is too harsh and may thwart a payer's ability to earn a living to pay support, some jurisdictions have adopted "hardship" provisions to ameliorate this effect. Temporary licences, licensing for "employment purposes only," and judicial and

administrative discretion are all ways of giving the payer the opportunity to maintain his licence while making support payments.

The one criticism that is not addressed by the preliminary results is that the remedy is functionally unrelated to the technical or operational requirements of the operation of a motor vehicle (or, indeed for any occupational, professional or commercial licence). Whether or not this linkage is legitimate remains a policy question governments must decide; one that will become increasingly compelling as evidence of the remedy's effectiveness in support collection and compliance mounts.

ENDNOTES

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³Ontario, Ministry of the Attorney General, *Estimates Briefing Book 1994-95* (Toronto: The Ministry, 1995), p. 96.

⁴Canada, Federal/Provincial/Territorial Family Law Committee, *Federal/Provincial/Territorial Family Law Committee's Report and Recommendations on Child Support*, Appendix D: *Future Directions For Development of a National Support Enforcement Strategy* (Ottawa: Department of Justice, 1995).

⁵*Ibid.*, p. D-3.

⁶These include the attachment of the debtor's funds in a joint bank account; reporting defaulters names to the credit bureau; establishing priority of maintenance creditors over other unsecured creditors; improved access to information held by third parties and government agencies concerning the location, place of employment and other locating information; elimination of the limitation periods; and licence revocation.

⁷Fax information received from Eleanor Landstreet, Executive Director, National Child Support Enforcement, Washington, D.C., 24 March 1994. "State Licensing Restrictions/Revocations" (12 November 1993).

⁸Ann Fuller, "Men who don't pay support could lose licence," *Globe and Mail*, 25 June 1993, p. A10.

⁹Telephone interview with Pat Dunlop, Maintenance Enforcement Program, Ministry of Justice, Winnipeg, Manitoba, 14 December 1994; and with Donna Gilman, Assistant Director, Maintenance Enforcement Branch, Department of Justice, Regina, Saskatchewan, 12 December 1994.

¹⁰Telephone interview with Eleanor Landstreet, 20 September 1994.

¹¹*Maintenance Enforcement Act*, S.A. 1985, c. M-O.5, ss. 7 and 5.

¹²Telephone interview with Leslie Gronow, Director of Communications, Department of the Attorney General, Edmonton, Alberta, 28 March 1995.

¹³*Maintenance Enforcement Amendment Act, 1994*, S.A. 1994, c. 21, ss. 5, 7, and 8.

¹⁴*Ibid.*, s. 5.

¹⁵Telephone interview with Rachel Toliver, Enforcing and Tracking Manager, Maintenance Enforcement Program, Department of the Attorney General, Edmonton, Alberta, 23 March 1995; and telephone interview with Leslie Gronow.

¹⁶Chris Zdeb Montgomery, "The wheels come off for deadbeat dads," *Edmonton Journal*, 23 February 1995, p. A1; and "Deadbeat dad pays \$16,000," *Edmonton Journal*, 2 March 1995, p. B1.

¹⁷*Maintenance Enforcement Act, 1995*, S.N.S. 1994-95, c. 6, s. 66.

¹⁸*Ibid.*, ss. 9, 10, and 6.

¹⁹*Ibid.*, s. 30.

²⁰*Ibid.*, s. 30(2).

²¹*Ibid.*, s. 30(3).

²²United States, U.S. Commission on Interstate Child Support, *Supporting Our Children: A Blueprint for Reform* (Washington, D.C.: The Commission, 1992), pp. 171-174.

²³*Ibid.*

²⁴H.R. 4570, 103rd Cong., 2d Sess. (1994); H.R. 1961, 103rd Cong., 1st Sess. (1993).

²⁵Mark Kehoe, "Panel OKs federal worker part of child support measure," *Congressional Quarterly*, 30 July 1994, p. 2151.

²⁶Cal. Welfare & Institutions Code §11350.6 (West 1994); and 1994 Cal. Stat. 906 §§3.6 and 5.

²⁷Steve Pokin, "Leverage for support," *The Press-Enterprise*, 6 November 1994, p. C1.

²⁸Steve Pokin, "Support-licence approach gains favor nationally," *The Press-Enterprise*, included in faxed information received from Gary Padilla, Associate Analyst, Child Support Management Bureau, Department of Social Services, Sacramento, California, 3 March 1995.

²⁹1994 Cal. Stat. 906 §3.6.

³⁰*Ibid.*, §3.6, s. 3(A).

³¹*Ibid.*, §3.6.

³²Pokin, "Leverage for support," *The Press-Enterprise*.

³³"'Matches' are often truck drivers," included in faxed information from Gary Padilla.

³⁴Eugene J. Fierro, "Please Hand Your Licence to the Bailiff: Florida's Latest Effort to Collect Delinquent Child Support," *American Journal of Family Law* (Winter 1993): 165.

³⁵Fla. Stat. § 409.2551 (1994).

³⁶Fla. Stat. § 61.13015 and § 409.2598 (1994).

³⁷Fla. Stat. § 409.2598 (1994).

³⁸Telephone interview with Phil Scruggs, Senior Human Services Program Specialist, Department of Revenue, Tallahassee, Florida, 22 March 1995.

³⁹ Fla. Stat. ch. 93 - 208 (1993) §61.13015, §231.097, §409.2598, §455.203, §559.79, §322.058 and §61.181; and Fierro, "Please Hand Your Licence to the Bailiff: Florida's Latest Effort to Collect Delinquent Child Support," p. 165.

⁴⁰Telephone interview with Phil Scruggs.

⁴¹ Me. Rev. Stat., Tit. 19, §306, s. 1; §306; Tit. 12, §6308, 6309, 7079-A, 7079-B; Tit. 10, §8005, 8006; Tit. 29-A, §2459 (1993); and Colburn W. Jackson, Director, DSER, "Licence revocation," *Division of Support Enforcement And Recovery Instructional Memorandum*, 7 April 1994, No. CWJ - 107 (Augusta, Maine: Department of Human Services, 1994).

⁴²Me. Rev. Stat., Tit. 19, §§305, 306; Tit. 12, §§6308, 6309, 7079-A, 7079-B; Tit. 10, §§8005, 8006; Tit. 29-A, §2459 (1993).

⁴³Me. Rev. Stat., Tit. 19, §306, s. 2.

⁴⁴"Highlights of Licence Revocation Initiative," 7 February 1995 (Augusta, Maine: Department of Human Services, Division of Support Enforcement and Recovery).

⁴⁵*Ibid.*, p. D-3.

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Arizona	Enacted 6/18/90 & 1993. Amended in 4/94.	Professional, business & trade	Contempt of court	None	Yes	Temporary provision & grace period allowed
Arizona Arizona Revised Statute § 32-3701; § 12-2452						
Arkansas	Enacted 4/20/93; implemented 10/1/94	Commercial drivers, occupational, professional & business	6 month delinquency	Procedures being written	Not specified	60 day temporary license until arrangements made to pay
Arkansas Arkansas Code Annotated § 27-23-125 (for Commercial Drivers Licenses); § 16-22-102 (for suspension of Attorney Licenses); § 17-1-104 (for revocation or suspension of professional and business licenses)						
California	Enacted and implemented 11/1/92	Commercial drivers, professional, business, trade & commercial fishing	30 day delinquency	Licensing Boards take IV-D tape and match daily against their files.	Yes	A one-time temporary license can be issued for 150 days.
California California Welfare and Institutions Code Section 11350.6						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Florida	Enacted; effective 7/1/93. Procedures implemented 12/21/93	Drivers licenses, vehicle registration, teachers, professional, business & trade	30 days delinquency and court's decision to suspend	Case-by-case basis	Yes	If noncustodial parent fails to reach agreement to pay, or does not pay the full amount owed, the court may order suspension
Florida	Florida Statutes §§ 61.13015 and §§ 409.2598 (for teaching certificates, professional, business and trade licenses; §§ 231.097 and 231.28 (for teaching certificates); § 322.058 (for drivers licenses and vehicle registrations); § 455.203 (for professional licenses); § 559.79 (for business licenses)					
Illinois	Enacted; effective 1/92. Implementation in progress	Drivers license, professional, business & trade (broad enough to encompass sporting)	30 day delinquency	Not yet determined	Yes	Not yet determined
Illinois Illinois Compiled Statutes Annotated § 305 5/10 - 17.6; § 5 100/10 - 65						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Iowa	Enacted and implemented 5/94	Commercial drivers, professional, business, and occupational licenses	Contempt of court	None	Only if there is an Iowa order or registered order in Iowa	Court may allow continued practice contingent on compliance with repayment agreement
Iowa Iowa Code § 598.23A						
Kansas	Enacted & effective 7/1/94	Professional licenses	Contempt of court	Case-by-case basis	Yes	Temporary license issued for 6 months at which time the license will be suspended or terminated if no release has been obtained.
Kansas Kansas Statutes Annotated § 74-146; § 74-147; § 20-1204a						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Kentucky	enacted 4/8/94; effective 1/1/95	Drivers license, commercial drivers licenses	An arrearage which accrued since 1/1/94, equal to one year's obligation	On-line access to Dept. Motor Vehicles	Yes	not applicable
Kentucky Kentucky Revised Statutes § 186.570						
Maine	Enacted & effective 6/30/93. Amended effective 7/13/94. Manual processes fully implemented	Drivers & occupational	No current support payment or payment toward arrears according to written agreement or failure to provide health insurance (if ordered) in past 90 days	Occupational licensors must match data annually w/ IV-D. IV-D has on-line access to drivers license data.	Remedy available to enforce a support order issued by any state.	Revocation after notice and appeal process if continued noncompliant
Maine Maine Revised Statutes Annotated 19 § 305 (occupational licenses); 19 § 306 and 29-A § 2459 (drivers licenses)						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Massachusetts	Enacted and effective 4/13/94. Implementation in process	Drivers license, vehicle registration, professional, trade & recreational licenses	Drivers licenses & registration revoked if there is an outstanding capias or bench warrant for a contempt hearing. Revocation of professional, trade & recreational licenses after notice & opportunity for a hearing & a finding that payments towards arrears are not being made at the rate of 25% of the current order or pursuant to a repayment agreement.	IV-D will match tapes sent from licensing agencies.	Yes, if there is a MA license.	IV-D will stop proceedings upon acceptance of a payment plan

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Massachusetts Massachusetts Annotated Laws 119A § 16						
Minnesota	Enacted & implemented 5/1/92. Amended 8/1/93 & 8/1/94	All occupations licensed by the State & student grants	30 day delinquency	IV-D will send notice to the licensing authority for IV-D cases; nonIV-D cases require court order	Yes, if there is a MN license	Maximum 2 year probation for cases of extreme hardship
Minnesota Minnesota Statutes Annotated § 518.551 subdivision 12; § 214.101						
Montana	Enacted, effective 10/1/93.	State agency issued drivers licenses, vehicle registration, professional, business, occupational, and trade licenses	An amount equal to at least a 6 month arrearage.	IV-D agency will issue an order to suspend the license & to refrain from the activity. This order is manually sent to the licensing authority to implement the suspension. Automated tape matches are being explored.	Yes	Allow 60 days to request hearing, pay arrears, or make arrangements for payment. After a hearing, IV-D may issue a stay for significant hardship cases.
Montana Montana Code Annotated §§ 40-5-701 to 713						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Nevada	Enacted 7/1/93; effective 10/1/93.	Occupational, professional licenses & permits	Action against licenses is at the discretion of the licensing authorities.	IV-D can request lists of occupational and professional license holders from licensing authorities.	Yes	Not yet determined
Nevada Nevada Revised Statutes \$ 425.347; \$ 425.348						
Oklahoma	Enacted 6/1/93.	Professional & trade licenses	3 month arrearage	Procedures being written		
Oklahoma Oklahoma Statutes Annotated 56 \$ 240.11						
Oregon	Enacted & effective 11/4/93. Implementation 7/1/94	Commercial drivers, electricians, plumbers, commercial fishing, real estate, construction contractors & landscapers	\$2,500 arrearage	Magnetic tape	Yes, for cases registered in OR.	None
Oregon Oregon Revised Statutes \$ 25.750; \$ 25.753; \$ 25.756; \$ 25.771; \$ 25.783; \$ 25.762; \$ 25.765; \$ 25.768; \$ 25.774; \$ 25.777; \$ 25.780; \$ 25.990						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Pennsylvania	Enacted 7/2/93; implemented 9/2/93	Professional & trade licenses	3 months in arrears and unable to attach the income of the support obligor	Court order to licensing authority	Will request that the Supreme Court Rules Committee determine the effect of this Act on foreign orders.	Not applicable.
Pennsylvania Consolidated Statutes Annotated 23 § 4355						
South Dakota	Enacted & effective 7/1/93. Implemented 11/1/93.	Drivers, professional, occupational & trade licenses	Accumulated arrearage of \$1,000 or more.	Monthly automated matches will be completed between the Dept. of Commerce & Regulation & the State IV-D agency computer systems.	Yes, if the initiating State requests the restriction as part of a URESA/UIFSA action & the noncustodial parent resides in SD and is licenses by the State	A 180 day extension of driving privileges is provided & the license is subsequently restricted unless payment arrangements have been made.
South Dakota South Dakota Codified Laws § 32-12-116 (drivers licenses); § 25-7A-56 (professional licenses)						

State Licensing Restrictions & Revocations February, 1995

State & Citation	Legislative Status	Licenses Affected	"Trigger" Criteria	"Match" Process	Interstate Cases	Interim Penalty Provisions
Vermont	Enacted 7/1/90.	Professional, business & trade licenses	1 month in arrears or not meeting the repayment schedule	Licensing agencies require applicants to complete a self-attesting form	Yes, if the underlying order is a VT order	Waiver for good cause
Vermont Vermont Statutes Annotated 15 § 795						
Virginia	Enacted 7/1/94. Limited implementation	Business, trade, professional & occupational	90 days in arrears or \$5,000 arrearage	tape to tape match w/ DMV & Dept. of Health professionals	Yes	No temporary licenses. Individuals given 90 days to surrender license.
Virginia Code of Virginia § 63.1 - 263.1 (for suspension of occupational license); § 20 - 60.3 (contempt of support orders.)						

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